



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**DISSENTING OPINION IN ADVISORY OPINION 1980-128**

of

**COMMISSIONER FRANK P. REICHE**

On January 29, 1981 the Federal Election Commission approved Advisory Opinion 1980-128 by a 5-1 vote. This Opinion responded to a series of questions posed by the Chamber of Commerce of the United States concerning the proposed distribution of an "issue paper" on inflation to various groups. The groups in question were the following: all candidates in a Federal Election, only those candidates in a Federal Election who had been identified by the Chambers' separate segregated fund as "pro-business", the general public, or a combination of the general public and some or all of the candidates in a Federal Election. The actual advisory opinion request was contained in a letter by the Chamber to the Commission dated October 24, 1980. Subsequent thereto, but before the General Election on November 4, 1980, the Chamber distributed copies of the study to selected Federal candidates believed to be "pro-business". The issue presented by the advisory opinion request was whether or not the expenses incurred by the Chamber in producing and distributing this inflation study constituted a prohibited corporate contribution under Section 441b of the Federal Election Campaign Act.

While I concur with the majority conclusion of the Commission that no corporate contribution would occur if a distribution of this paper were made to all candidates in a Federal Election or to the general public, I specifically dissent from that portion of the advisory opinion which sanctions the distribution of this issue paper to a select group of candidates just prior to a Federal Election. The statute (Section 441b) expressly prohibits any contribution or expenditure by a corporation "in connection with" Federal Elections.

Query, whether the Chamber's distribution to a targeted group of candidates so close to the election would constitute the making of an expenditure in connection with a Federal Election. There are those, including some members of the Commission, who concluded that this was primarily a lobbying effort on the part of the Chamber. If this were so, then why did the Chamber not wait until after the election to make this distribution when the identity of all potential Federal officeholders could have been established and the lobbying effort more effectively directed? Indeed, there is an indication in the advisory opinion itself that the Chamber was aware of the potential impact which the distribution of this issue paper might have upon the impending election.

On the other hand, the precise intent of the Chamber in making the distribution just prior to the election is not clear. It was for this reason that I sought, during the Commission's deliberations on this matter, to obtain from Commission staff members additional information which might provide guidance on the Chamber's primary intent.

Unfortunately, no additional information was available. I believe it is impossible for the Commission, based upon the limited information introduced with respect to the Chamber's intent in proposing and making this selective distribution, to determine whether the expenditure by the Chamber constituted a prohibited corporate contribution in connection with a Federal Election. Furthermore, it is my firm belief that each case in this complex area must be decided upon its own merits. In this instance, one must either obtain additional information or else refuse, as I now do, to acquiesce in approving a course of conduct which may well be contrary to the Federal Election Campaign Act. The confluence of these two factors, i.e., distribution only to a select, targeted group and just before a Federal Election, gives rise to a concern that these expenditures may have been made by the Chamber in connection with a Federal Election. It is also my fear that this advisory opinion will be construed as representing broad approval of corporate political activity just prior to an election on the theory that the material involved is issue-oriented and does not relate directly to any specific candidate. I would caution those who interpret the majority's decision in this manner.